United Nations A/68/895

General Assembly

Distr.: General
30 May 2014

Original: English

Sixty-eighth session
Agenda item 33 (b)
Prevention of armed conflict: strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution

Letter dated 29 May 2014 from the Permanent Representative of Ukraine to the United Nations addressed to the Secretary-General

I have the honour to enclose herewith the statement of the International Election Observation Mission on the presidential elections in Ukraine (see annex), held on 25 May 2014.

I would be grateful if you would have the present letter and its annex circulated as a document of the General Assembly, under agenda item 33 (b).

(*Signed*) Yuriy **Sergeyev**
Ambassador
Permanent Representative

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Annex to the letter dated 29 May 2014 from the Permanent Representative of Ukraine to the United Nations addressed to the Secretary-General

INTERNATIONAL ELECTION OBSERVATION MISSION
Ukraine — Early Presidential Election, 25 May 2014

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

Kyiv, 26 May 2014 — This Statement of Preliminary Findings and Conclusions is the result of a common endeavour involving the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), the European Parliament (EP) and the NATO Parliamentary Assembly (NATO PA).

João Soares (Portugal) was appointed by the OSCE Chairperson-in-Office as Special Coordinator to lead the short-term OSCE observer mission. Ilkka Kanerva (Finland) headed the OSCE PA delegation, Andreas Gross (Switzerland) led the PACE delegation, Göran Färm (Sweden) headed the EP delegation, and Karl A Lamers (Germany) led the NATO PA delegation. Tana de Zulueta (Italy) is the Head of the OSCE/ODIHR Election Observation Mission, deployed from 20 March 2014.

The assessment was made to determine whether the election complied with OSCE commitments and Council of Europe standards, as well as international obligations and domestic legislation. This Statement of Preliminary Findings and Conclusions is delivered prior to the completion of the election process. The final assessment of the election will depend, in part, on the conduct of the remaining stages of the election process, including the tabulation of results, the handling of possible post-election day complaints and appeals. The OSCE/ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the election process. The OSCE PA will deliver its report to the Standing Committee on 28 June. The PACE will present its report during its Summer Session on 23-27 June 2014. The EP will present its report in its Committee on Foreign Affairs. The NATO PA delegation will present its report during the Assembly's Spring Session on 30 May-1 June.

PRELIMINARY CONCLUSIONS

The 25 May early presidential election in Ukraine was characterized by high voter turnout and the clear resolve of the authorities to hold what was a genuine election largely in line with international commitments and with a respect for fundamental freedoms in the vast majority of the country. This was despite the hostile security environment in two eastern regions and the increasing attempts to derail the process by armed groups in these parts of the country. The Central and other election commissions operated impartially and collegially on the whole, although a number of transparency issues arose just prior to election day and decisions taken may have been beyond their authority. The voting and counting process were transparent and largely in line with procedures, despite large queues of voters at polling stations in some parts of the country. The early stages of the tabulation process were evaluated

less positively by International Election Observation Mission (IEOM) observers mostly due to technical problems.

The election took place in a challenging political, economic and in particular security environment. Genuine efforts were made by the electoral authorities to conduct voting throughout the country, despite continued unrest and violence in the east of Ukraine, where anti-government forces control some areas, and the acting government is conducting counter-insurgency operations. This seriously impacted the election environment and affected the general human-rights situation there, also obstructing meaningful observation. The election did not take place on the Crimean peninsula, as it is not under the control of the Ukrainian authorities, and citizens residing there faced serious difficulties to participate in the election.

The legislative framework is adequate for the conduct of democratic elections. Numerous substantive changes were introduced to the legal framework during the election period, partly in an effort to address the rapidly changing political-security environment and ensure voting for those from the affected regions, and partly as a further step in the electoral reform process. While the changes resulted in a significantly different legal framework than the one in place when the election was called, most of the recent amendments were seen as necessary by election stakeholders.

Despite the challenging environment and limited lead time, the Central Election Commission (CEC) operated independently, impartially, collegially, and generally efficiently, and met all legal deadlines in the pre-election period. However, it did not adequately regulate a few aspects of the election, which lessened uniformity in the administration of the process. Candidate registration was largely inclusive and resulted in a field of 21 candidates.

Nominations of District Election Commission (DEC) and Precinct Election Commission (PEC) members by candidates, who may and did replace their nominees at will, affected the stability and efficiency of the election administration. However, most DECs and PECs, other than in Donetsk and Luhansk *oblasts* (regions), were able to overcome time constraints, frequent changes in their composition, and, on occasion, resource problems.

The situation in most parts of Donetsk and Luhansk *oblasts* significantly and adversely affected electoral preparations there. Serious problems in these *oblasts* included intrusion into and forced eviction and closure of DECs by armed groups, intimidation of election officials, including abductions, death threats, forced entry into private homes, seizure of equipment and election materials, and the shooting of a candidate proxy. These illegal actions constituted an attempt to prevent the election, deny citizens the fundamental right to freely participate and elect their chosen representative. IEOM commends the effort of those election officials who tried to continue with their work in spite of the enormous challenges they faced.

IEOM interlocutors voiced general confidence in the accuracy of the centralized State Voter Register (SVR). Voter lists were generally available for public scrutiny within the legal deadline. In parts of Donetsk and Luhansk *oblasts*, the CEC temporarily closed access to the SVR due to the so-called 11 May "referenda" to prevent abuse. Voter lists were produced with delays, or not at all in those two regions. A limited number of voters from the Crimean peninsula applied for a temporary transfer of their voting address to other parts of Ukraine.

The election campaign was subdued and overshadowed by political and security developments. It intensified only in the final weeks in most of the regions of the country. Most candidates were able to campaign without restrictions, except in the two eastern regions. However, there were a number of campaign-related incidents, including cases of intimidation and attacks on party and campaign offices, as well as instances where candidates were obstructed in their campaign.

As a positive development, the OSCE/ODIHR EOM observed no cases of misuse of administrative resources, and unlike in previous elections, interlocutors did not raise it as an issue of concern. The OSCE/ODIHR and the Council of Europe's Venice Commission have frequently stressed the need to improve campaign finance regulations to provide greater oversight and transparency. Despite recent amendments, these regulations should be further strengthened.

The media landscape is diverse, however, the lack of autonomy of the media from political or corporate interests often affects their editorial independence. Freedom of the media was severely undermined in the east, where journalists and media outlets faced threats and harassment throughout the campaign period. The overall public discourse in the broadcast media during the campaign period was dominated by the political and security crisis. Editorial coverage of candidates was limited and focused on a few contestants. In a welcome initiative, state television organized and broadcast debates among all candidates. Steps to stop certain channels from broadcasting alleged propaganda, while not directly impacting the election, were an unwelcome restriction. In line with the law, state media provided all candidates with free airtime and space. The adoption of a law transforming state television and radio into a public-service broadcaster is a welcome development. The introduction of this law was a long-standing OSCE/ODIHR recommendation.

Most national minority communities reported no substantial obstacles to their participation in the election process, with the notable exception of Crimean Tatars and Roma. There were incidents of violence and vandalism, unrelated to the election, against some communities. The debate about language policy was characterized by more flexible positions than in previous elections, although most of the candidates clearly disagreed on the issue of Russian as a second state language. Large parts of Ukraine's Russian-speaking community were affected by systematic disruption of the work of the election administration in parts of Donetsk and Luhansk *oblasts*.

The legislation provides equality between women and men in public and political life. There were 2 women among the 21 presidential candidates. Five of the 15 CEC members are women; they were almost equally represented on DECs and PECs.

The election law provides sufficient opportunities for an effective remedy of electoral disputes, although it sets out strict requirements for filing complaints and allows for rejection of complaints for minor deficiencies in format. The CEC received a limited number of complaints before election day but did not consider any on their merits due to formal deficiencies. The courts considered election disputes brought before them promptly and thoroughly. Recent legislative changes regarding the judiciary and the call for judicial lustration impacted the work of the courts during the election period.

The registration and accreditation of observers by the CEC was in general inclusive, with the Ukrainian authorities welcoming observers from all OSCE countries. Following recent amendments and in accordance with past OSCE/ODIHR

recommendations, Ukrainian citizen organizations may observe presidential elections, and all observers are now entitled to receive copies of results protocols at all levels of the election administration. However, deadlines for registration and accreditation of citizen observers to an extent limit their ability to effectively observe all stages of the election process.

In most of the country, election day took place peacefully. The CEC put voter turnout at 60 per cent. It started posting detailed preliminary election results by polling stations on its website on election night. Despite efforts of the election administration to ensure voting throughout the country, polling did not take place in large parts of Luhansk and Donetsk *oblasts*, due to systematic disruption by armed separatist groups. The voting and counting process was orderly and well organized in most of polling stations observed, with only minor procedural problems noted. However, the high number of voters frequently resulted in overcrowding, especially where local elections were held simultaneously, and frequently delayed the count in these polling stations. The early stages of the tabulation process were assessed negatively in a fifth of observations from IEOM observers, mainly due to working conditions, overcrowding, and an attack on the CEC's computer system that disrupted the processing and transmission of election results.

PRELIMINARY FINDINGS

Background

The early presidential election took place in a challenging political, economic and particularly security environment, which affected the legal framework, technical preparations and the campaigns of candidates.

The Maidan events starting in November 2013 and escalating in February brought about changes in the balance of power in parliament and the government composition, as well as the appointment of an acting president after Viktor Yanukovych fled the country. The so-called "referendum" of 16 March on the Crimean peninsula,[1] which was followed by the Russian Federation parliament's decision to include the Autonomous Republic of Crimea and the city of Sevastopol as federal entities; this rendered the organization of the presidential election there impossible. In April, several administration buildings in Donetsk and Luhansk *oblast* (regions) were occupied, and a number of violent and fatal incidents have occurred in the east and south of Ukraine since then. The acting president launched a counter-insurgency operation on 14 April, which is continuing to date.

The control of the acting government has been further challenged following so-called "referenda" on autonomy/independence on 11 May, staged by self-proclaimed local "authorities" in some parts of Donetsk and Luhansk *oblast*.[2] These "referenda" were not observed by the OSCE/ODIHR Election Observation Mission (EOM) to any extent.

Together with the early presidential election, over 300 local elections (for mayor or council) took place, including for Kyiv city mayor and council. The OSCE/ODIHR

[1] The Council of Europe's Commission for Democracy through Law (Venice Commission) issued an opinion CDL-AD(2014)002, which stated that this "referendum" was unconstitutional and contrary to European standards.

[2] The Ukrainian authorities called these "referenda" illegal and illegitimate.

EOM only observed the local elections to the extent that they had an impact on the presidential election.

Legal Framework and Election System

The president of Ukraine is elected by popular vote for a five-year term. The same person may not serve as president for more than two consecutive terms. In case no candidate wins more than 50 per cent of the votes cast, a second round takes place three weeks after the first round, between the two candidates who won the most votes. On 16 May, the Constitutional Court issued a clarification that the presidential term for the extraordinary election on 25 May is five years.[3]

In February, parliament passed a law and related resolution on restoring provisions of the Constitution that were initially introduced in 2004 and were found to be unconstitutional on procedural grounds by the Constitutional Court in 2010.[4] Neither the law nor the resolution were considered by parliament as amendments to the Constitution and therefore the special procedures for amending the Constitution were not followed. To date, the recent changes were not appealed. The work of the special commission appointed by parliament in March to draft amendments to the Constitution continues and proposed drafts, including on the powers of the president, are expected after the election.

The entire legal framework for the presidential election underwent several substantive changes in the three months prior to the election. The primary legal framework is comprised of the Constitution and the Law on Election of the President of Ukraine (hereinafter, the election law), the Law on the Central Election Commission (CEC) and the Law on the State Voter Register, all of which were amended. While changes in legislation were widely accepted as necessary and welcomed by election stakeholders, the changes resulted in a significantly different legal framework than the one in place when the election was called.[5]

The election law alone was amended six times in 2014.[6] Some of the amendments were to make the early election on 25 May feasible, facilitate concurrent local elections, and to react to the needs of the current context.[7] However, the March

[3] On 22 April, 101 members of parliament submitted a request for clarification on two contradicting provisions in the Constitution, Article 103 that states the presidential term is five years and the transitional provisions that says the next regularly scheduled election will be in March 2015.

[4] Decision of the Constitutional Court No. 20-rp/2010, dated 30 September 2010 (case No. 1-45/2010).

[5] Previous OSCE/ODIHR reports on elections in Ukraine have criticized changes in election legislation shortly prior to an election as contrary to international good practice and potentially confusing for participants. As well, the Venice Commission's Code of Good Practice in Electoral Matters recommends not modifying key aspects of the electoral legislation within a year prior to an election (point II.2.65). All reports are available at: http://www.osce.org/odihr/elections/ukraine.

[6] 28 February, 13 March, 8 April, 6 May, 15 May, and 20 May.

[7] The 6 May amendments reduced the minimum number of Precinct Election Commission members from 12 to 9, to address a shortfall in nominations by presidential candidates. These amendments were submitted and adopted immediately prior to the deadline for PEC formation. Amendments on 15 May addressed the role of executive bodies in ensuring the organization and security of the elections and permit the movement of DECs in emergency situations. Finally, 20 May amendments prescribed the destruction of undeliverable ballots and permitted the addition of military personnel serving in Donetsk and Luhansk to the voter list on election day.

amendments were part of larger efforts for electoral reform aimed at harmonizing the law with the recently amended parliamentary election law and addressing outstanding recommendations previously made by the OSCE/ODIHR and the Council of Europe's Commission for Democracy through Law (Venice Commission). Explicit language was added to the election law as part of March amendments obliging the establishment of results regardless of the number of polling stations where elections were held. Throughout the pre-election period, numerous proposals for legislation to address the conduct of the election in the changing political-security environment and access to the polls for citizens from the Crimean peninsula were considered by parliament.[8] Even though procedures allowing voters from the Crimean peninsula to vote elsewhere were relaxed, they remained onerous in practice.

The Constitution provides for equality between women and men in public and political life. In addition, the Law on Equal Opportunities for Women and Men specifically provides for equal rights and opportunities in the election process.

Election Administration

The election is administered by the CEC; 213 District Election Commissions (DECs); and 32,244 Precinct Election Commissions (PECs). The CEC is a permanent institution. The CEC forms DECs, and DECs form PECs. DEC and PEC members are nominated by candidates.[9] Legal amendments that shortened the timeframe to form DECs and PECs increased the organizational challenges.

Among other things, the CEC has the task to ensure the implementation and protection of citizens' electoral rights, which in practice can only be achieved with the full cooperation of other state institutions at all levels. The situation in the east of Ukraine seriously challenged the election administration's ability to fulfil this responsibility. No elections were organized on the Crimean peninsula as it is not under the control of the Ukrainian authorities, and citizens residing there faced serious difficulties in participating in the election, partly caused by legal provisions.

Despite the challenging environment and limited lead time, the CEC operated independently, impartially, and collegially, and generally efficiently, meeting all legal deadlines. Between 25 February and 24 May, the CEC adopted some 700 decisions (resolutions) on a wide variety of issues. However, a few aspects of the election were not adequately regulated by the CEC, which lessened uniformity in the administration of the process.[10] Almost all CEC resolutions were adopted unanimously.

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[8] On 15 April, parliament passed the Law on Ensuring the Rights and Freedoms of Citizens and the Legal Order on the Temporary Occupied Territory of Ukraine. In addition to addressing many key legal questions, the law also states that voting will not take place on the Crimean peninsula and relaxes procedures for citizens from these territories to register to vote in other parts of Ukraine.

[9] A higher-level commission may appoint members if nominations are below the minimum commission size.

[10] For example, the CEC did not regulate the mechanism to redistribute DEC executives among the candidates after a candidate withdrawal; the methods for DECs to allocate executive positions in the PECs among nominees, and how appointees are found where candidates (combined) nominate less than the legal minimum number of members on DECs and PECs.

The CEC conducted its work in a transparent manner. Its sessions were open to candidates and their representatives, who were able to address the commission, as well as media and accredited observers. As in previous elections, the CEC held unannounced "preparatory" meetings prior to sessions. The CEC recently amended its Rules of Procedures to allow invited persons to attend its "preparatory" meetings. The CEC publishes all its decisions and other information on its website, and made a significant effort to publish thousands of DEC decisions. Training was provided for DEC and PEC executives. Most OSCE/ODIHR EOM observers assessed the training to be of good quality.

The law requires that DEC and PEC chairpersons, deputy chairpersons and secretaries (executive positions) are allocated to candidates in proportion to the number of nominations submitted. The CEC formed DECs within the legal deadline and appointed their executives according to the "proportionality principle". As during previous elections, subsequently many candidates replaced high numbers of their appointees, including executives.[11] This increased the CEC's workload and negatively affected the election administration's functioning.[12] The withdrawal of candidates Nataliya Korolevska and Oleh Tsariov necessitated the subsequent reallocation of 56 DEC executives. In selecting replacements, the CEC prioritized electoral experience. Consequently, after the reallocation some candidates had a slightly higher proportion of DEC executives than others.[13]

OSCE/ODIHR EOM observers reported that initially, a significant minority of DECs faced various impediments to their work, including with resourcing. In the run-up to the election, the situation in most districts improved. However, the political environment, general lack of security and counter-insurgency operations in large parts of Donetsk and Luhansk *oblasts* significantly and adversely affected electoral preparations there. The situation deteriorated after 11 May. Serious problems in these *oblasts* included the eviction and closure of DECs by armed groups, seizing of DEC equipment and election materials and intimidation of DEC and PEC members and candidate proxies, including abduction, forced entry into private homes and shooting of a candidate proxy.[14] This deterred citizens from serving as election commissioners and seriously impeded electoral preparations.[15] Nevertheless, IEOM observers stressed the determination of many election officials in these *oblasts* to overcome the serious challenges.

The CEC established 32,244 electoral precincts. OSCE/ODIHR EOM observers reported that over half of DECs experienced difficulties in appointing PECs by the

[11] By 23 May, some 43 per cent of DEC members had been replaced; some on multiple occasions.

[12] The CEC also handled aspects of the local elections and a parliamentary by-election that were held on 25 May.

[13] Notably Petro Poroshenko, Mykhaylo Dobkin, Yulia Tymoshenko, and Zoryan Shkiryak, whose representation among the executives rose by between 30 to 16 per cent. Anatoliy Hrytsenko challenged the CEC's reallocation of DEC executive positions. The CEC decision was upheld; however, the courts noted that the legal obligation to ensure proportional allocation applies when filling vacated posts and not only upon formation of the DEC.

[14] The OSCE/ODIHR EOM observers were informed by the candidate's head of campaign.

[15] In its resolutions No. 505 and 617 the CEC called on the parliament, the government and other authorities to provide proper security for the work of election commissions. The citizen observer group Committee of Voters of Ukraine urged the authorities to provide security for voters and election commission members, detailing the difficulties being faced by them, see at http://svsever.lg.ua/2014/05/zayavlenie-loo-kiu-chlenyi-izbiratelnyih-komissiy-ne-dolzhnyi-byit-pushechnyim-myasom-v-borbe-kievskoy-vlasti-s-luganskimi-separatistami/.

6 May legal deadline, largely due to some candidates not submitting nominations or submitting an insufficient number. DECs employed various solutions to make up a shortfall. This lack of uniformity might have influenced the pluralism of some PECs.[16] DECs used a variety of methods to allocate the PEC executive positions, including lotteries, although they achieved a proportional allocation among the candidates. The majority of DECs formed all PECs by the deadline, with the remainder formed with a slight delay. Candidates replaced many of their PEC members, causing DECs and PECs operational difficulties. However, many DECs in Donetsk and Luhansk *oblasts* experienced more serious difficulties, struggling to form PECs according to the legal provisions, such as mass resignations primarily caused by a fear of serving as PEC members in an unsecure environment. On election day, the reduction in the minimum size of PECs from 12 to 9 members did cause operational problems, particularly where local elections were held simultaneously.

Five of the 15 CEC members are women, including one deputy chairperson and the secretary. Men and women are almost equally represented on DECs, including chairpersons; OSCE/ODIHR EOM LTOs reported a higher proportion of women serving as DEC secretaries (some 68 per cent).

Voter Registration

Voters are registered automatically in the centralized State Voter Register (SVR). The CEC supervises the work of the central SVR office, 27 Registration Administration Bodies (RABs) and 756 Register Maintenance Bodies (RMBs), which continuously update and maintain the register. Since 2013, voters can check their records online, thereby enhancing transparency.[17] According to official data, as of 21 May, 35,906,852 voters were registered to vote, of which 55 per cent are women. Some 666,990 homebound voters were registered to vote at their place of stay, and 472,058 voters were registered to vote abroad.[18]

IEOM interlocutors voiced general confidence in the accuracy of the voter register. Due to the situation in eastern Ukraine, in early May the CEC temporarily closed access to the SVR database for some 40 RMBs in Donetsk and Luhansk *oblasts*, to prevent abuse.[19] Consequently, the preliminary voter lists of some 1,500 PECs (out of 3,907 in these *oblasts*) were not printed and distributed within the legal deadline then in effect.[20] Access to the SVR for all but 13 of these RMBs was restored.[21] OSCE/ODIHR EOM observers reported that almost all PECs for which handover was observed received the preliminary voter lists within or shortly after the deadline.[22] In Donetsk and Luhansk *oblasts*, the handover of voter lists could not be observed by OSCE/ODIHR EOM observers due to the security situation; the CEC reported that only 32 and 25 per cent of PECs these regions respectively were able

[16] After the March amendments, PECs must have at least 12 members; the last change reduced it to 9 members.

[17] Some 108,000 voters used this facility from 25 February to May 20.

[18] According to CEC Resolution No. 484, 114 PECs were established in 75 countries.

[19] The actual number of RMBs whose access was blocked varied from day to day.

[20] According to March amendments the preliminary voter lists had to be delivered to PECs 16 days before election day. This deadline was shortened to 8 days prior to election day, after the 15 May amendments.

[21] Access to the SVR for these RMBs remains blocked as their premises remain occupied. These RMBs are responsible for the records of some 288,000 voters.

[22] OSCE/ODIHR EOM LTOs observed the handover of voter lists to PECs at 109 RMBs.

to receive them. According to the SVR office, voter lists were seized from two RMBs in the two eastern *oblasts*.[23]

Following amendments to the election law, voters can no longer register on election day.[24] The CEC has sought to raise awareness of legal provisions that allow all Ukrainian voters, including those residing on the Crimean peninsula, to change their voting location on a temporary basis without changing their residence.[25] In practice, however, OSCE/ODIHR observed differing and inconsistent application of this provision, and voter education in general appeared to be insufficient. As of 21 May, some 171,000 voters requested to temporarily change their voting address, including some 6,000 residents of the Crimean peninsula.[26]

Candidate Registration

A Ukrainian citizen is eligible for the presidency if he or she is older than 35, has the right to vote, has resided in Ukraine for at least 10 years prior to election day, and has command of the state language.[27] These residency requirements appear at odds with international standards.[28] A provision that a presidential candidate must not have been convicted of an intentional crime has been removed from the law, in line with previous OSCE/ODIHR and Venice Commission recommendations.[29] Candidates can be nominated by a party or through self-nomination.

In order to be registered, each prospective candidate had to submit a comprehensive set of documents together with a document certifying that a deposit of UAH 2.5 million (around EUR 178,000 at the time of registration) had been paid into a special CEC bank account. This sum is only returned to rejected nominees and the two candidates who qualify for a second round.[30]

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[23] On 15 May, voter lists were seized by armed people from Kyivski district RMB in Donetsk and Zhovtnevyi district RMB in Luhansk.

[24] On 20 May the law was amended allowing the military personnel serving in Donetsk and Luhansk *oblasts* to be added to the voter lists on election day.

[25] Requests for temporary changes of voting address must be filed no later than 5 days before election day and must be justified. However, the law does not specify what can be considered as justification. Voters whose voting address is on the Crimean peninsula do not need any justification apart from their ID.

[26] The total number of voters registered on the Crimean peninsula was 1,806,361.

[27] The legislation does not elaborate how, if at all, a candidate's command of the state language is assessed. In addition, the Venice Commission's Code of Good Practice in Electoral Matters, point I 1.1 c iii-iv: iii. states that "a length of residence requirement may be imposed on nationals solely for local or regional elections; iv. the requisite period of residence should not exceed six months; a longer period may be required only to protect national minorities".

[28] "Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation". See Paragraph 14 of General Comment No. 25 (1996) to Article 25 of the International Covenant on Civil and Political Rights (ICCPR) by the UN Human Rights Committee. See also OSCE/ODIHR and Venice Commission Joint Opinion CDL-AD(2009)040.

[29] See judgments of the European Court of Human Rights in *Scoppola v. Italy* (No. 3), 22 May 2012 and *Hirst v. the United Kingdom* (No. 2), 6 October 2005.

[30] The OSCE/ODIHR in its Final Report on the 2010 presidential election recommended: "Reducing of the financial deposit required for a candidate to register and the threshold of votes needed for a refund of that deposit should be considered." The law is silent about the return of deposits if there is only one round. Ibid. CDL-AD(2009)040, para 17.

The CEC registered the candidates in accordance with the legal provisions and in a largely inclusive manner. It received 46 candidate applications by the legal deadline, registering 23 candidates — of whom 7 were nominated by parties — and rejecting 23 applicants. All of the rejected candidates had material errors in their applications.[31] Twenty-two had failed to pay the deposit, while the CEC decided that the other nominee's application had not complied with the documentation requirements and other provisions of the law.[32] A total of 16 appeals were filed by 11 of the rejected applicants with the courts. All CEC decisions were upheld on appeal.

Two candidates withdrew from the election by the legal deadline. The 21-candidate field,[33] which included two women, offered voters a wide choice between candidates representing diverse political views.

The Campaign Environment and Campaign Finance

The presidential campaign has been subdued overall and has been overshadowed by the recent political and security developments. It intensified only in the final weeks in most of the country.

Only nine candidates had a visible campaign with billboards, posters, newspapers, tents and, to a lesser extent, rallies and door-to-door canvassing. Some candidates declared that they were conducting a less prominent campaign, to demonstrate modesty given the dire economic and security situation in the country, or due to a lack of resources. Most candidates were able to campaign freely and without restriction, except in the eastern regions.[34] However, some candidates faced obstruction and difficulties, and some decided to limit their campaign or did not campaign in person due to security reasons. Four candidates, who had conducted limited or no campaign activities, announced in the media, after the legal deadline, that they were withdrawing from the presidential race.[35]

In total, out of 114 rallies observed by the OSCE/ODIHR EOM, 100 were held by five candidates, predominantly in the western and central regions.[36] The contenders promoted a range of issues, including security, stability and unity of the country, decentralization, constitutional reform, language policy, reform of the armed forces,

[31] In line with the previous OSCE/ODIHR and Venice Commission recommendations, the amended law provides nominees with the opportunity to correct technical errors and inaccuracies in submitted documents. Ibid. CDL-AD(2013)006, para 60.

[32] The CEC closely scrutinized the application of Darth O. Vader. It decided that his supporting documents and his electoral programme did not comply with the legal requirements and referred the matter to the prosecutor regarding potentially falsified documents.

[33] Olha Bohomolets, Yuriy Boyko, Andriy Hrynenko, Anatoliy Hrytsenko, Mykhailo Dobkin, Oleksandr Klymenko, Valery Konovalyuk, Renat Kuzmin, Vasil Kuybida, Oleh Lyashko, Mykola Malomuzh, Petro Poroshenko, Vadym Rabynovich, Volodymyr Saranov, Petro Symonenko, Yulia Tymoshenko, Serhiy Tihipko, Oleh Tyahnybok, Vasyl Tsushko, Zoryan Shkiryak and Dmitro Yarosh.

[34] Sixteen of the 21 candidates stressed that the security situation had a negative impact on their ability to campaign in Donetsk, Luhansk and Kharkiv *oblasts*.

[35] Zoryan Shkiryak, Petro Symonenko and Oleksandr Klymenko; the latter announced that he was withdrawing in favour of Petro Poroshenko. However, these candidates remained on the ballot paper; there is no provision of removing them from the ballots.

[36] Petro Poroshenko — 32 rallies, Oleh Tyahnybok — 30 rallies, Yulia Tymoshenko — 18 rallies, Anatoliy Hrytsenko and Oleh Lyashko — 10 each.

the fight against corruption and oligarchy, as well as relations with the European Union, NATO and the Russian Federation. Militant rhetoric towards anti-government groups and the Russian Federation was used by some candidates, while campaigning.

The OSCE/ODIHR EOM observed a number of violent incidents during the campaign period. Several cases of intimidation and attacks on political party and campaign offices across the country were reported by OSCE/ODIHR EOM LTOs.[37] OSCE/ODIHR EOM LTOs reported that three candidates were obstructed in their campaign.[38] In Luhansk *oblast*, campaign tents and staff of some candidates were attacked or threatened.[39] As a positive development the OSCE/ODIHR EOM observed no cases of misuse of administrative resources, and unlike in previous elections, interlocutors did not raise it as an issue of concern. There are no effective enforcement mechanisms in legislation that would address campaign violations.[40]

The election law does not limit campaign expenses. While voluntary contributions by individuals to a candidate's campaign are limited, the funds a candidate or the nominating party can contribute to a presidential campaign are not limited. There is no requirement for candidates to report on their campaign finances before election day. The numerous amendments to the election law adopted in 2014 did not address previous OSCE/ODIHR and Venice Commission recommendations on campaign-financing issues. Furthermore, the law continues to give an advantage to candidates nominated by political parties.[41]

The Media

The media landscape is diverse and comprises a large number of state and private broadcast, print and online outlets; however, the lack of autonomy of the media from political or corporate interests often affects their editorial independence. The main source of public information is television, but Internet is increasing in importance and offers a wide range of views. The state-owned broadcaster will be transformed into a public service broadcaster by the Law on Public Television and Radio Broadcasting of Ukraine.[42] The introduction of this law was a long-standing OSCE/ODIHR recommendation.

The media legislation generally provides a sound framework for freedom of the media. However, freedom of the media was a major concern throughout the

[37] Communist Party offices in Kyiv, as well as in Rivne, Zakarpattya, Vinnytsia, Dnipropetrovsk and Ternopil *oblasts*; Party of Regions offices in Chernivtsi and Chernihiv *oblasts*. *Batkivshchyna* reported attacks or threats in Kyiv, Lviv and Odessa *oblasts*; campaign offices of Petro Poroshenko were attacked in Donetsk and Cherkassy *oblasts*.

[38] Mr. Dobkin in Dnipropetrovsk, Kyiv and Kherson *oblasts*; Mr. Hrytsenko in Poltava *oblast*; Mr. Tihipko in Luhansk *oblast*. Mr. Dobkin's proxy informed the OSCE/ODIHR EOM that two appeals had been submitted to the Prosecutor General over several such cases.

[39] Mr. Hrytsenko, Mr. Poroshenko, and Ms. Tymoshenko, according to reports by OSCE/ODIHR EOM LTOs.

[40] The CEC or DEC is to send the claim or complaint to the relevant enforcement body for investigation and further action.

[41] This is not in line with the Venice Commission's Code of Good Practice in Electoral Matters, I.2.3, available at: http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2002)023-e. Ibid. CDL-AD(2009)040, paras. 48-53.

[42] The law was adopted by parliament on 17 April and signed by the interim president on 13 May. However, due to transitory provisions, the law is not likely to be effectively enforced until 2015.

pre-election period. Journalists and media operating in the south and east of Ukraine faced constant and severe threats and harassment.[43] A temporary ban on four Russian TV channels was enacted on 25 March that was not uniformly respected.[44] Steps to stop certain channels from broadcasting alleged propaganda, while not directly impacting the election, were an unwelcome restriction.

The conduct of the media during the election campaign is regulated by the election law, which stipulates that both state and private media shall offer balanced coverage and provide contestants with equal conditions. State national television and radio abided by the election law by offering free airtime to all contestants. Candidates availed themselves of this opportunity and also made use of the free space provided by two state-owned newspapers. The National Television and Radio Broadcasting Council (NTRBC) supervised the media's compliance with existing laws during the election campaign.[45] Yet, the NTRBC's capacity to fully ensure compliance of the media with the law is limited by an unclear system of sanctions.[46]

OSCE/ODIHR EOM media monitoring showed that during the election campaign, the overall political discourse in the media was dominated by the crisis in the southern and eastern regions, including when candidates were directly covered.[47] Broadcast media covered the campaign in a variety of formats but focused their editorial coverage on a limited number of contestants.[48] The state-owned *First Channel*, in a positive initiative, organized and broadcast "National Debates" among all candidates.[49]

In state TV's news coverage, however, the campaign was very limited. *First Channel* devoted 59 per cent of its airtime to covering the work of state institutions, and only 11 per cent to the candidates. The most popular talk show on *First Channel*, "Shuster Live", provided Ms. Tymoshenko with 29 per cent of its coverage.[50] Mr. Poroshenko was invited to participate in debates with Ms. Tymoshenko on this talk show, but he declined. The tone of coverage on private broadcasters was generally neutral, but in a few cases the airtime allocated appeared biased. For

[43] The OSCE Representative on Freedom of the Media closely followed the deterioration of the media's capacity to freely operate in the country and issued several statements calling for a restoration of the freedom of the media. See: http://www.osce.org/fom/118990.

[44] The temporary ban, requested by the National Television and Radio Broadcasting Council who claimed the channels were airing broadcasts that incite hatred, was imposed by Decision No. 824/3456/14 of the Kyiv District Administrative Court, which will be in force until a final decision of the court on the merits.

[45] The NTRBC's election-related activities included a media-monitoring component. The NTRBC informed the OSCE/ODIHR EOM that it notified broadcasting companies and the CEC on detected violations. A public report will be issued only after the election.

[46] The NTRBC informed the OSCE/ODIHR EOM that its capacity is currently limited to issuing warnings, which it does by notifying broadcasting companies and the CEC about detected violations.

[47] The OSCE/ODIHR EOM on 1 April commenced a media monitoring of seven TV channels (state-owned *First Channel* and private channels *Inter*, *5 Channel*, *ICTV*, *1+1*, *TVi*, *TRK Ukraina*), and of 2 newspapers (state-owned *Holos Ukrainy* and private *Fakty i Kommentarii*).

[48] Mr. Poroshenko and Ms. Tymoshenko obtaining both 20 per cent, Mr. Dobkin 9 per cent, Mr. Tihipko 9 per cent, and Mr. Lyashko 8 per cent of the coverage.

[49] All candidates participated in these debates.

[50] "Shuster Live" constituted 70 per cent of all political coverage on *First Channel*, outside of free airtime and "National Debates".

instance, *5 Channel* gave 60 per cent of its editorial coverage to Mr. Poroshenko.[51] Not many candidates invested in paid advertisement for their campaign. Four candidates purchased 82 per cent of all total paid advertising in the TV channels monitored, with Mr. Poroshenko alone having purchased 33 per cent.[52] Print media offered a limited coverage of the campaign; instances of articles with features of paid material not clearly marked as such were observed. During the last two weeks of the campaign, state and private TV channels broadcast messages from the CEC and voter education spots.

Participation of National Minorities

According to the 2001 census,[53] 77.8 per cent of citizens of Ukraine are ethnic Ukrainians, 17.3 per cent are ethnic Russians and the remaining 5 per cent comprise Belarusians, Bulgarians, Crimean Tatars, Jews, Hungarians, Moldovans, Poles, Roma, Romanians, and other small minority groups. Twenty-nine per cent of the population consider Russian as their native language.

Most national minority communities throughout the country told the OSCE/ ODIHR EOM that they expected their members to vote and reported no substantial obstacles to their participation in the election process as voters or candidates.[54] Campaign rhetoric was observed to be tolerant towards national minorities.

While most candidates did not reach out to the minority vote in particular, the debate about language policy was characterized by more flexible positions than in past campaigns. Most candidates agreed that the Russian language should have greater status or, at the very least, that the 2012 language law should remain in force. However, they still clearly disagreed on the question of a second state language. Parliament's decision (later suspended) to repeal the language law in February 2014 continued to worry some minorities, who cited language policy as their primary campaign issue. They did not, however, report that the conduct of the election in the state language only created a barrier to their understanding of election materials or debates. An exception was the Roma community, who acknowledged a limited understanding of the state language for some members and reported exclusion from the election process more generally due to a lack of identity documents.

The prevention of polling in certain districts in Donetsk and Luhansk *oblast* disproportionally affected Ukraine's Russian-speaking community, over one-third of which lives in these *oblasts*. Incidents of violence, intimidation and vandalism against some communities, including Jewish and Roma, contributed to an atmosphere of uncertainty for minorities in various areas in the country. Crimean Tatars and other minorities on the Crimean peninsula, like other residents from Crimea, voted in significantly reduced numbers.[55]

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[51] *5 Channel* is owned by Mr. Poroshenko.

[52] Other three candidates were Ms. Tymoshenko, 20 per cent, Mr. Dobkin, 15 per cent, and Mr. Tihipko 14 per cent.

[53] The next census was originally scheduled for 2011, but has been postponed to 2016.

[54] The OSCE/ODIHR EOM has interviewed 94 representatives from 20 ethnic minority groups and 7 religious communities across the country, as well as 6 consultative bodies representing minorities.

[55] Based on census figures, 243,400 Crimean Tatars resided on the Crimean peninsula as of 2001. The Mejlis of the Crimean Tatar People estimates their current population to be 300,000. However, only some 6,000 of the approximately 1.8 million voters from Crimea re-registered temporarily to vote elsewhere.

Complaints and Appeals

The right to an effective remedy is sufficiently guaranteed in the election law; however, the election law still allows for the rejection of complaints based on minor deficiencies in format.[56] The right to appeal decisions, actions or inactions of election commissions and other actors involved in the process is granted to all participants in the election process.[57] For the majority of election-related matters, complainants can file their complaint with the election administration or the courts, or with both. Election-related complaints and appeals are heard by administrative courts; the High Administrative Court is the court of last instance for election-related matters.

In the consideration of election-related complaints and appeals, the courts adhered to the two-day deadline for review and offered complainants a sufficient opportunity to state their claim. Additionally, courts thoroughly questioned the CEC's arguments and demanded additional documentation from the CEC when necessary to adjudicate the matter. A total of 29 cases were reviewed by the Kyiv Administrative Court of Appeals, of which 17 were subsequently appealed to the High Administrative Court.[58]

The CEC received 16 complaints in the pre-election period but did not consider the merits of any of the complaints received.[59] Complaints were answered with letters explaining the formal deficiencies of the complaint in accordance with the election law. No further efforts were made by the CEC to consider the questions raised in the complaints on its own initiative.

Although not directly affecting the adjudication of election-related disputes, recent legislative developments dismissing constitutional and high administrative court judges, changing the competency of the courts, increasing parliament's role in judicial appointments, and calling for the lustration of sitting judges impacted the work of the judiciary in the election period. Further, the expressed hesitation of some judges to adjudicate election-related disputes and freedom of assembly cases

[56] Article 95 of the election law sets out the requirements for complaints filed with the election commission and the courts, including *inter alia*: a list of attachments to the complaint, personal details of the subject of the complaint even if not known, multiple copies of all the documents attached, notarized copy of authority as a proxy or candidate representative even if already registered as such with the CEC.

[57] Presidential candidates, parties that are participating in the election process, election commissions, domestic observers, as well as voters whose rights were violated can file complaints and appeal decisions.

[58] The 29 cases included 16 appeals of CEC decisions regarding registration of 11 candidates, 1 challenge from a rejected candidate to the registration of Petro Poroshenko, 2 complaints from a presidential candidate regarding statements in the media made by other candidates, 1 appeal of the CEC's reallocation of DEC executive positions amongst candidates, 3 appeals regarding a citizen's request for the CEC to provide the personal history statements of the presidential candidates, 3 from a citizen about the program of Yulia Tymoshenko, 1 request from a citizen to change the ballot type, and 2 appeals related to the accreditation of international observers. Two additional complaints were reviewed by local courts in Chernihiv and Kyiv regarding misleading information in the media about candidates and party members.

[59] One complaint from candidate Vadym Rabinovych about the presidential orders for state security for six of the presidential candidates was discussed in a CEC session where the decision was taken that it is not within the CEC's jurisdiction to review the actions of the president.

for fear of future repercussions raises concern, as does the political interference in the election of a Chief Justice for the High Administrative Court.[60]

Citizen and International Observers

The process of registration and accreditation of observers by the CEC was in general inclusive, with the Ukrainian authorities welcoming observers from all OSCE countries.[61] Following the amendments to the election law, citizen organizations have the right to observe the elections. The law requires that in order to be eligible to observe the election, civic organizations' charters must stipulate election observation as one of the organization's activities, thereby narrowing the opportunity to observe. In addition, a 60-day deadline for the civic organization to be registered as eligible to nominate observers, might significantly limit the possibility of civic organizations to observe the elections. In total, 10 civic organizations were permitted to accredit observers. The largest groups, *OPORA* and the Committee of Voters of Ukraine (CVU) conducted long-term and short-term observation and published several reports before election day.

In line with previous OSCE/ODIHR recommendations, all observers are now granted the right to receive copies of results protocols at all levels of the election administration, which is an important element to increase transparency. Furthermore, all national observers are entitled to file complaints.

Election Day

In most of the country, election day took place peacefully overall. The CEC put voter turnout at 60 per cent. It started posting detailed preliminary election results by polling stations on its website at around 01:30 a.m. but faced technical problems doing so.

Despite efforts of the election administration to ensure voting throughout the country, polling did not take place in 10 of the 12 election districts in Luhansk *oblast* and 14 of the 22 election districts in Donetsk *oblast*.[62] This was due to illegal actions by armed separatist groups before and on election day, including death threats and intimidation of election officials, seizure and destruction of polling materials, as well as the impossibility to distribute ballots to polling stations due to general insecurity caused by these groups. The majority of Ukrainian citizens resident in these *oblasts* were thus deprived of the opportunity to vote and to express their will. Elsewhere, only a few isolated attempts to disrupt voting were reported.

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[60] On 17 April, the scheduled election of the Chief Justice of the High Administrative Court was interrupted by approximately 200 protestors who demanded that two of the three judicial candidates not be considered. An agreement was reached with Right Sector and a *Batkivshchyna* member of parliament that the court would share the list of judges running prior to re-scheduling the election.

[61] According to the CEC, around 3,000 international observers from 19 foreign states and 20 international organizations were accredited. The registration of one international organization was rejected on the grounds not envisaged by the election law, this decision was reversed by the court ruling.

[62] The CEC reported that voting did take place in over 800 of the 3,908 polling stations in these *oblasts*, in election districts 47, 49, 50, 58, 59, 60, 61 and 62 in Donetsk *oblast*, and in election districts 114 and 115 in Luhansk *oblast*. However, turnout in these regions was below average, due to the insecure environment.

Opening procedures were assessed positively in all but 16 of the 342 polling stations where opening was observed, although IEOM observers noted some minor procedural problems, including isolated cases of ballot boxes not being sealed properly, and small delays in opening for voting.

Voting was assessed positively in 98 per cent of polling stations observed, and with a somewhat less positive assessment where local elections were also held (94 per cent positive), including Kyiv (95 per cent). Outside the capital, there were no significant regional variations. Circumstances in and around polling stations were assessed positively overall, although overcrowding was reported from 11 per cent of polling stations observed, and large groups of people waiting outside to vote in 6 per cent. IEOM observers noted organizational problems in 6 per cent of polling station observed, mainly due to inadequate layout or poor queue control. They reported only a few isolated cases of tension, intimidation or obstruction. Almost one half of polling stations observed was not readily accessible for people with disabilities, and the layout of one quarter was not adequate for disabled voters.

Voting procedures were followed in the large majority of polling stations observed. The main problem reported by IEOM observers was that in 4 per cent of polling stations observed, not all voters marked their ballots in secrecy. In 3 per cent, ballot boxes were not properly sealed. Apart from group voting (4 per cent), only isolated cases of more serious procedural violations were observed. Voter identification procedures were adhered to in almost all polling stations observed; however, in 25 per cent of polling stations observed, small numbers of voters were turned away, usually because their names could not be found on the voter list or because they could not produce a valid identity document. Official complaints were filed in at least 4 per cent of polling stations observed.

Unauthorized people were present in 9 per cent of polling stations observed, and seen interfering in or directing the process in 2 per cent. Candidate observers or proxies were present in 95 per cent of polling stations observed, mainly for candidates Poroshenko (82 per cent) and Tymoshenko (81 per cent), while citizen observers were present in 24 per cent. In polling stations observed by IEOM observers, 66 per cent of PEC chairpersons were women; overall, women accounted for 71 per cent of PEC members in these polling stations.

The vote count was assessed positively in 95 per cent of the 363 polling stations where it was observed. Candidate observers and proxies were present at 95 per cent of counts observed, and citizen observers at 20 per cent. Unauthorized people were present at 9 per cent of counts observed, often interfering in or directing the process. IEOM observers reported some procedural errors and problems during the count. In 17 per cent of counts, PECs had problems completing the results protocol, and 20 per cent had to revise figures established earlier. IEOM observers noted 30 cases of pre-signed results protocols.

The early stages of the tabulation process were assessed negatively in 52 of 300 observations submitted by IEOM observers. Premises and conditions were not adequate in many DECs, which at times affected proper observation. Many IEOM observers reported overcrowding (70 reports) and tension (61 reports).

On election night, the CEC informed the IEOM that the communications network linking the DECs to the CEC's informatics system "*Vybory*" was not working due to

a cyber-attack.[63] This caused a major disruption to the receipt and processing of election material, prevented many DECs from transmitting election results to the CEC, and delayed the CEC's announcement of preliminary results. DECs responded to the problem in different ways: some manually tabulated vote totals; some entered this data into the *Vybory* system and sent screenshots to the CEC, while others temporarily suspended their activity.

The English version is the only official document.
However, this statement is also available in Ukrainian and Russian.

MISSION INFORMATION & ACKNOWLEDGEMENTS

The OSCE/ODIHR Election Observation Mission opened in Kyiv on 20 March, with 24 experts in the capital, and with 100 long-term observers deployed throughout Ukraine.

On election day, over 1,200 observers from 49 countries were deployed, including 1,025 long-term and short-term observers deployed by the OSCE/ODIHR, as well as a 116-member delegation from the OSCE PA, a 46-member delegation from the PACE, a 18-member delegation from the NATO PA, and a 14-member delegation from the EP. Voting was observed in over 4,050 polling stations out of a total of 32,244. Counting was observed in some 360 polling stations across 162 election districts. IEOM observers reported from 151 out of 213 DECs.

The observers wish to thank the authorities of Ukraine for the invitation to observe the election, the Central Election Commission for its cooperation and for providing accreditation documents, and the Ministry of Foreign Affairs and other authorities for their assistance and cooperation. The observers also wish to express appreciation to the OSCE Project Coordinator in Ukraine, the OSCE Special Monitoring Mission to Ukraine and embassies and international organizations accredited in Ukraine for their cooperation and support.

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[63] Information provided by the CEC chairperson at 03:15 a.m.